

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

WILLIAM C. CARPENTER, JR.
JUDGE

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RE: Finjan, Inc. v. Trustwave Holdings, Inc.
C.A. No. N18C-04-006 WCC CCLD

Dear Counsel:

After reviewing the parties' pleadings and hearing oral arguments on November 19, 2018, the Court reserved judgment on Defendant's Rule 12(b)(6) Motion to Dismiss Plaintiff's Complaint.

In considering a motion to dismiss for failure to state a claim pursuant to Rule 12(b)(6), the Court must assume the truthfulness of the complaint's well-pleaded

allegations,¹ and afford a plaintiff “the benefit of all reasonable inferences that can be drawn from its pleading.”² At this preliminary stage, dismissal will be granted only when the Court is able to determine with “reasonable certainty” that the plaintiff would not be entitled to relief “under any set of facts that could be proven to support the claims asserted” in the complaint.³

Plaintiff Finjan’s Complaint alleges that Defendant Trustwave breached the parties’ Patent License Agreement (“Agreement”) by failing to pay royalties purportedly triggered by Trustwave’s acquisition by Singtel. The parties appear to agree that if Singtel, as the acquiring company, is now using the patent information in its business, additional royalties are required. They also reluctantly agree that if Singtel is not using the patent information and it is only being used for Trustwave’s existing business, no additional royalties are required.

It also appears that if an acquisition occurred, an audit provision would kick in to allow the Plaintiff to determine if the acquiring company is now using the patent information in its products. A reasonable requirement that for some unexplained reason has not worked well in this case and has led to this lawsuit.

As a result, Finjan’s suit for breach of contract may proceed, but only to determine whether or not Singtel is actually using the patent technology that would trigger royalty payments under the Agreement. The cost obligations alleged in Counts Two and Three of the Complaint will await the outcome of the discovery which the Court has authorized. At the moment, it appears the Plaintiff was requesting an audit of matters that may not be required under the Agreement and

¹ See *Solomon v. Pathe Commc’ns Corp.*, 672 A.2d 35, 38–39 (Del. 1996). See also *VLIW Tech., LLC v. Hewlett-Packard Co.*, 840 A.2d 606, 611 (Del. 2003) (noting that the complaint is to be liberally construed and under “Delaware’s judicial system of notice pleading, a plaintiff need not plead evidence” but must “only allege facts that, if true, state a claim upon which relief can be granted.”).

² *In re USACafes, L.P. Litig.*, 600 A.2d 43, 47 (Del. Ch. 1991) (noting, however, that the Court is not required to blindly accept all allegations or draw all inferences in a plaintiff’s favor).

³ See *id.* (citing *Clinton v. Enter. Rent-A-Car Co.*, 977 A.2d 892, 895 (Del. 2009)).

was also perhaps frustrated by Defendant's failure to fully cooperate. The Court will address these issues if some liability is found by Singtel's acquisition. Therefore, Defendant's Motion to Dismiss is denied, with the stipulations explained in this letter.

Sincerely,



Judge William C. Carpenter, Jr.

cc: Nancy Hernandez-Becerra, Civil Case Manager